



Waller Lansden Dortch & Davis, LLP
511 Union Street, Suite 2700
Nashville, TN 37219-8966

615.244.6380 main
615.244.6804 fax
wallerlaw.com

Kim Harvey Looney
615.850.8722 direct
kim.looney@wallerlaw.com

February 17, 2016

VIA HAND DELIVERY

Melanie M. Hill
James B. Christoffersen, Esq.
Tennessee Health Services and Development Agency
Andrew Jackson Building
9th Floor
502 Deaderick Street
Nashville TN 37243

Re: Baptist Memorial Hospital - Lakeland CN1508-037

Dear Melanie and Jim:

At the hearing in November for the Baptist FSED, there were some questions regarding provider-based status and reimbursement. We wanted to provide clarification to the agency members as to how the provider-based status and reimbursement works. The Department of Health and Human Services, Centers for Medicare and Medicaid Services ("CMS") sets forth specific requirements in 42 C.F.R. § 413.65 that must be met in order for an entity to be treated as provider-based for purposes of reimbursement under the Medicare and Medicaid program. Included below are those which are most relevant to this CON Application. The comments in *italics* address specifics either from the application or from the hearing in November for its related application. In this discussion, the FSED is the provider-based facility and Baptist is the main provider.

1. Ownership and Control (42 C.F.R. § 413.65(e)(1)).

- * The provider-based facility must be 100% owned by the main provider; Regional One can have no ownership in the provider-based facility.
- * The provider-based facility must have the same governing body as the main provider.
- * The provider-based facility must be under the administrative and financial control of the main provider.
- * The provider-based facility is operated under the same organizational documents as the main provider. For example, the provider-based facility must be subject to common bylaws and operating decision of the governing body of the main provider.



Melanie M. Hill
James B. Christoffersen, Esq.
February 17, 2016
Page 2

- * No joint venture is permissible in an off-campus location such as the one proposed.
 - * *According to the application, a new LLC is being formed that will be owned 60% by Baptist and 40% by Regional One to house and/or lease the real estate and equipment to be used at the provider-based facility and provide a structure to capitalize the same. As a real estate and/or leasing JV, the expenses and profits from this venture can be shared with Regional One in proportion to its ownership interest in the JV - which is not the same as sharing the profits and expenses of the provider-based facility. The lease to the provider-based facility must be fair market value.*
- 2. Licensure (42 C.F.R. § 413.65(d)(1)).
 - * The provider-based facility and the main provider are under the same license.
- 3. Clinical Services Integration (42 C.F.R. § 413.65(d)(2) & (i)).
 - * Professional staff at the provider-based facility have privileges at the main provider.
 - * The main provider maintains the same monitoring and oversight of the provider-based facility as it does for any other department.
 - * Inpatient and outpatient services of the provider-based facility and the main provider are integrated.
- 4. Financial Integration (42 C.F.R. § 413.65(d)(3)).
 - * The financial operations of the provider-based facility are fully integrated within the financial system of the main provider, as evidenced by shared income and expenses between the main provider and the provider-based facility. The costs are reported in a cost center of the main provider, and the financial status of the provider-based facility is incorporated and readily identified in the main provider's trial balance.
 - * Medicare will pay the main provider for the services provided at the provider-based facility.
 - * *Under the provider-based rules, there is no mechanism to share profits and losses of the provider-based facility with Regional One. This proposal is not a joint venture which would allow such sharing based on the respective ownership interests of the provider-based facility; the provider-based facility in this situation is 100% owned by Baptist.*



Melanie M. Hill
James B. Christoffersen, Esq.
February 17, 2016
Page 3

5. Public Awareness (42 C.F.R. §413.65(d)(4)).

- * The provider-based facility is held out to the public and other payers as part of the main provider. When patients enter the provider-based facility they are aware that they are entering the main provider and are billed accordingly.
- * *Any opportunities for co-branding of the provider-based facility with Regional One would be limited, if they exist at all.*

While there are certainly a number of other specific requirements that must be met, these are the most relevant based on the application and the discussion at the last hearing. Please do not hesitate to request additional information or clarification on this issue.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kim", with a stylized flourish.

Kim Harvey Looney

KHL:lag